

JAN 18 2008

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BOB SAVAGE,

Petitioner - Appellant,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS; et al.,

Respondents - Appellees.

No. 05-15641

D.C. No. CV-02-01222-WBS/JFM

MEMORANDUM *

Appeal from the United States District Court
for the Eastern District of California
William B. Shubb, Chief District Judge, Presiding

Submitted January 14, 2008**

Before: HALL, O'SCANNLAIN, and PAEZ, Circuit Judges.

Bob Savage, a California state prisoner, appeals from the district court's judgment denying his 28 U.S.C. § 2254 habeas petition. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Savage contends that the California Department of Corrections and Rehabilitation (“CDCR”) breached a contract that required his release from prison no later than August 11, 2001. We disagree. Even assuming that the three documents Savage refers to in the record can be construed as a contract between Savage and the CDCR, we conclude that these documents cannot reasonably be read to have established a date upon which Savage must be released. *Cf.*

Santobello v. New York, 404 U.S. 257, 262 (1971) (holding that when a plea agreement rests on the promise or agreement of the prosecutor, such that it is part of the inducement or consideration, the promise must be fulfilled).

We also note that Savage’s reliance on *McQuillion v. Duncan*, 306 F.3d 895 (9th Cir. 2002), is misplaced because, unlike McQuillion, Savage has never been found suitable for parole. Until Savage is found suitable for parole, his maximum term will continue to be life. *See* Cal. Penal Code § 3041; *In re Dannenberg*, 34 Cal. 4th 1061, 1091 (Cal. 2005).

AFFIRMED.